

DEC 16 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

OSVALDO CONTRERAS-CONTRERAS,

Defendant - Appellant.

No. 03-10154

D.C. No. CR-02-00148-HDM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Argued and Submitted December 1, 2003
San Francisco, California

Before: TASHIMA, THOMAS, and SILVERMAN, Circuit Judges.

Oswaldo Contreras-Contreras appeals his jury trial conviction for Unlawful Reentry of a Deported Alien in violation of 8 U.S.C. §1326(a) We affirm. Because the parties are familiar with the factual and procedural history of this case, we will not recount it here except as necessary.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Contreras's argument that the district court erred in admitting the warrant of deportation under the public records exception to the hearsay rule is foreclosed by *United States v. Hernandez-Rojas*, 617 F.2d 533, 534-35 (9th Cir. 1980) and *United States v. Contreras*, 63 F.3d 852, 857 (9th Cir. 1995). Contreras contends that these cases were wrongly decided. However, only an en banc court of this circuit may overrule our precedent absent an intervening Supreme Court decision or act of Congress. *See Cerrato v. San Francisco Cmty. Coll. Dist.*, 26 F.3d 968, 972 n.15 (9th Cir. 1994).

Contreras also argues that the district court erred in allowing an INS agent, who was not authorized to certify the non-existence of official INS records under 8 C.F.R. § 103.7(d), to testify that he had reviewed the pertinent records including the defendant's file and had not found any evidence that the defendant had applied for or received permission to reenter the United States. We need not reach this issue, because the government tendered evidence that the defendant had admitted that he had entered the country surreptitiously. Thus, under the facts of this case, any error was harmless.

AFFIRMED.